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BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SUBSTANTIAL)
DEVELOPMENT PERMIT ISSUED BY)
KING COUNTY TO ROBERT HICKS)
)
ROBERT E. CLUTTER and SHERRY)
D. CLUTTER,)
)
Appellants,)
)
v.)
)
KING COUNTY and ROBERT HICKS,)
)
Respondents.)

SHB No. 78-25

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the request for review of a substantial development permit issued by King County to Robert Hicks, was brought before the Shorelines Hearings Board, Dave J. Mooney, Chairman, Chris Smith, David A. Akana, Gerald D. Probst and Rodney G. Proctor, on December 13, 1978 in Seattle, Washington. Hearing examiner William A. Harrison presided.

Appellants Robert E. and Sherry D. Clutter appeared by their attorney, Steven A. Gaines. Respondent King County appeared by Robert D. Johns, Deputy Prosecuting Attorney. Respondent Robert Hicks appeared

1 by his attorney, John H. Bright.

2 Having heard the testimony, having examined the exhibits, having
3 read the Hearing Memoranda, having heard the arguments of counsel, and
4 being fully advised, the Shorelines Hearings Board makes the following

5 FINDINGS OF FACT

6 I

7 The appellants, Robert E. and Sherry D. Clutter, own and reside
8 upon a lakefront lot located on the northeast shore of Lake Washington
9 within unincorporated King County. The respondent, Robert Hicks, owns
10 and resides upon the lot directly north of (behind) the Clutter lot.
11 A disputed easement, serving the Hicks lot, encompasses the western
12 15 feet of the Clutter lot and would provide access to the lake for
13 Hicks. The terrain is such that the Hicks lot is much higher than
14 the Clutter lot. In proceeding across their boundary towards the
15 lake, within the easement, Hicks must descend 26 feet along a 40 degree
16 slope on the northern portion of the Clutter lot. This slope is not
17 easily passable since it is overgrown with dense blackberry brambles.

18 II

19 On March 11, 1977, respondent, Hicks, filed with King County an
20 application for a substantial development permit. The proposed develop-
21 ment consisted of a stairway to be located on the slope within the
22 easement on the Clutter lot. Such a stairway over the slope would
23 make it, and the balance of the easement, accessible by foot.

24 The application contained an Environmental Checklist in the form
25 provided by WAC 197-10-365 which implements the State Environmental
26 Policy Act, chapter 43.21C RCW. From the information contained in the

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1 application and actual inspection of the site, King County concluded
2 that the proposed development would not have a significant, adverse
3 impact upon the environment. King County therefore did not require
4 an environmental impact statement for the proposed development.

5 As originally submitted, the respondent's application called for
6 a wooden stairway supported by wooden piling in concrete footings. These
7 piling and footings were to be sunk into the face of the slope at periodic
8 intervals (see Exhibit R-5). At the request of King County, respondent
9 Hicks modified his application by substituting a plan for a steel and
10 wood stairway supported on its upper end by an existing concrete wall and
11 on its lower end by a concrete pier extending a minimum of four feet
12 below grade. This design would not touch the actual face of the slope
and therefore would not necessitate any disturbance of the slope face or
14 its protective vegetation (see Exhibit R-7). This modified application
15 and plan was approved by King County which issued a shoreline substantial
16 development permit to respondent Hicks on July 10, 1978. Appellants
17 have requested this Board's review of that permit.

18 III

19 The pertinent version of the shoreline master program adopted by
20 King County is dated November, 1975, and was approved by the Washington
21 State Department of Ecology on January 8, 1976. WAC 173-19-250. We
22 take official notice of this master program.

23 Appellants urge that the proposed stairway threatens the stability
24 of the slope over which it is to be constructed. They allege that the
25 following sections of the King County Master Program would be violated
by the proposed development:

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1 Residential Element, Master Program Elements
(chapter 3, page 27):

2 Objectives

3 1. Residential developments should be excluded from shoreline
4 areas known to contain development hazards.

5 . . .

6 Policy 2 - Residential development should be prohibited
7 in areas of severe or very severe landslide
8 or avalanche [sic] hazard.

9 Policy 3 - Residential development should be prohibited
10 in shoreline areas with slopes of 40% or
11 greater which are hazardous.

12 Policy 4 - Shoreline areas containing other potential
13 development hazards (e.g., geological conditions,
14 unstable subsurface conditions, erosion hazards,
15 ground water or seepage problems) should be
16 limited or restricted for development. The
17 burden of proof that development of these
18 areas is feasible, safe and ecologically
19 sound is the responsibility of the
20 developer.

21 The slope involved is 40 percent and some deep rooted trees on it
22 have taken on a bowed appearance indicating soil surface movement over a
23 long period of time. Nevertheless, the slope face is covered with low-
24 lying vegetation which protects it from erosion and stabilizes it. By
25 touching the earth's surface only above and below the face of the slope,
26 the stairway would not threaten this stabilizing vegetation on the slope
27 face. The design of the proposed stairway appears to have addressed
master program concerns for a feasible, safe, and ecologically sound
structure on a 40 percent slope.

The subject property is in an area designated as "Urban Environment"
by the King County Shoreline Master Program. Respondent, King County,
points out the following provisions of its shoreline master program

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1 | which it deems relevant to the proposed development:

2 | Shoreline Environments, Urban Environment, Purpose
3 | (chapter 4, page 32):

4 | The purpose of designating the Urban Environment is to ensure
5 | optimum utilization of shorelines within urbanized areas by
6 | permitting intensive use and by managing development so that
7 | it enhances and maintains the shoreline for a multiplicity
8 | of urban uses. The Environment is designed to reflect a
9 | policy of increasing utilization and efficiency of urban
10 | areas, to promote a more intense level of use through
11 | redevelopment of areas now under-utilized and to encourage
12 | multiple use of the shoreline if the major use is shoreline
13 | dependent. (Emphasis added.)

14 | The master program specifies the following General Policies
15 | regarding Urban Environments:

16 | . . .

17 | 3. Emphasis should be given to developing visual and
18 | physical access to the shoreline in the Urban Environment.

19 | . . .

20 | 6. Multiple use of the shoreline should be encouraged.

21 |

22 | Regulation C.1 regarding Recreational/Residential uses in Urban
23 | Environments (chapter 5, pages 97-98):

24 | 1. Recreational/residential developments shall provide usable
25 | access to and along the entire water's edge for all lot owners
26 | within the subdivision when topographically feasible to do so.
27 | Provisions for public access to the waterbody shall also be
28 | provided [sic] where appropriate.

29 |

30 | The proposed stairway would be a relatively minor development in an
31 | already developed urban, residential area. Its effect would be to afford
32 | the respondent, Hicks, access to the shoreline.

33 | FINAL FINDINGS OF FACT,
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IV

There is presently a dock at the foot of the easement claimed by respondent, Hicks. This may or may not be demolished in the near future. Appellants plan to build a new dock and such dock may be in a different location from the existing dock. The proposed stairway would provide useful shoreline access with or without a dock.

Appellants request relief in the form of a reversal of the substantial development permit or, alternatively, affirmance with a condition, inter alia, that construction of the stairway be delayed until such time as the County has considered and decided any application concerning docks at or near this location.

V

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings, the Pollution Control Hearings Board comes to these

CONCLUSIONS OF LAW

I

An environmental impact statement is required before any branch of government undertakes a "major action significantly affecting the quality of the environment." RCW 43.21C.030(2)(c). The governmental issuance of a shoreline substantial development permit can constitute a "major action." WAC 197-10-040(2). Prior to issuing the substantial development permit in this matter, however, King County determined that the proposal would not have a significant adverse impact on the quality of the environment. This determination was reached after consideration of

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1 an Environmental Checklist of impacts expected to result from the
2 proposed development, and after physical inspection of the site. When
3 reviewing King County's determination of non-significance we must accord
4 substantial weight to it. RCW 43.21C.090. After full consideration of
5 the evidence before us, we conclude that it was not wrong for King County
6 to determine that the proposed development will not have a significant
7 adverse effect on the quality of the environment. An environmental
8 impact statement was therefore not required before issuance of the
9 substantial development permit now under review.

10 II

11 Where, as here, there has been adoption and approval of a local
12 shoreline master program, our task is to determine whether the proposed
13 shoreline substantial development is consistent with (a) that master
14 program, and (b) the provisions of the Shoreline Management Act.
15 RCW 90.58.140(2)(b).

16 The King County Shoreline Master Program, which implements the
17 Shoreline Management Act, contains policies excluding or limiting
18 residential development on shorelines known to contain development
19 hazards. (See Finding of Fact III for text.) These policies, however,
20 do not absolutely preclude residential development. This proposed
21 development is not inconsistent with the King County Shoreline Master
22 Program or the Shoreline Management Act and is, instead, consistent
23 with them in that it would enhance access to the shoreline.

24 III

25 The proposed development, a stairway, does not include any future
26 dock. The stairway would provide useful shoreline access either with

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1 or without a dock. King County's issuance of a shoreline substantial
2 development permit for the stairway prior to its own determination
3 regarding docks on or near the subject property is not an impermissible
4 approval of piecemeal development, and the permit is not faulty on that
5 ground. Accordingly, we decline to condition the permit now under
6 review to require a delay in construction of the stairway until King
7 County has made a determination regarding docks.

8 IV

9 Respondent King County urges that appellants' appeal is frivolous
10 and intended solely for delay, and that respondent is therefore
11 entitled to an award of costs and attorneys' fees. An award of costs
12 and fees is not authorized in matters brought before this Board.

13 V

14 We have carefully considered other contentions raised by the parties
15 and find them to be without merit.

16 VI

17 Any Finding of Fact which should be deemed a Conclusion of Law is
18 hereby adopted as such.

19 From these Conclusions, the Board enters this

20 ORDER

21 The substantial development permit issued by King County to Robert
22 Hicks (No. 007-77-SH) is hereby affirmed.

23
24
25
26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW AND ORDER

1 DONE at Lacey, Washington, this 25th day of April, 1979.

2 SHORELINES HEARINGS BOARD

3 *Dave J. Mooney*
4 DAVE J. MOONEY, Chairman

5 *Chris Smith*
6 CHRIS SMITH, Member

7 *David A. Akana*
8 DAVID A. AKANA, Member

9 *Gerald D. Probst*
10 GERALD D. PROBST, Member

11 *Rodney G. Proctor*
12 RODNEY G. PROCTOR, Member

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